

Letter of Findings: 04-20110480
Sales Tax
For the 2008 and 2009 Tax Years

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ISSUE

I. Sales Tax—Imposition.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-3-1; IC § 6-2.5-3-2; IC § 6-2.5-4-1; IC § 6-2.5-9-3; IC § 6-2.5-13-1; IC § 6-8.1-5-1; Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer protests the imposition of sales tax on its vehicle repair sales transactions where the vehicles were delivered to customers to locations outside of Indiana.

STATEMENT OF FACTS

Taxpayer, a sole proprietorship, operates an auto repair business where Taxpayer repairs, rebuilds, and restores vehicles that are owned by Taxpayer's customers. Taxpayer also is a retailer of used vehicles. The Department conducted a review of Taxpayer's business records. After the audit, the Indiana Department of Revenue ("Department") determined that Taxpayer owed additional sales and use tax and assessed tax and interest for the 2008 and 2009 tax years. The Department determined that Taxpayer had made purchases of tangible personal property—including tools and equipment—without paying sales tax at the time of purchase or remitting use tax to the Department. The Department also determined that Taxpayer had failed to collect sales tax on certain of its vehicle repair sales transactions. Taxpayer protested the imposition of sales tax. An administrative hearing was conducted, and this Letter of Findings results. Further facts will be supplied as required.

I. Sales Tax—Imposition.

DISCUSSION

As a threshold matter, all tax assessments are prima facie evidence that the Department's claim for the tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

The Department found that Taxpayer performed repairs on vehicles, added repair parts to the vehicles, and did not collect sales tax on the repair parts.

IC § 6-2.5-4-1(a)-(c) defines a "retail merchant" involved in "retail transactions," as follows:

(a) A person is a retail merchant making a retail transaction when he engages in selling at retail.

(b) A person is engaged in selling at retail when, in the ordinary course of his regularly conducted trade or business, he:

(1) acquires tangible personal property for the purpose of resale; and

(2) transfers that property to another person for consideration.

(c) For purposes of determining what constitutes selling at retail, it does not matter whether:

(1) the property is transferred in the same form as when it was acquired;

(2) the property is transferred alone or in conjunction with other property or services; or

(3) the property is transferred conditionally or otherwise.

Accordingly, a retail merchant performing retail transactions is a person who obtains and sells tangible personal property. Pursuant to IC § 6-2.5-2-1(a), retail transactions that are made in Indiana are subject to the state gross retail tax ("sales tax"). "The retail merchant is required to collect the tax [due on the retail transaction] as [an] agent for the state." IC § 6-2.5-2-1(b). The retail merchant "has a duty to remit Indiana [sales] or use taxes... to the department, [to] hold those taxes in trust for the state, and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state." IC § 6-2.5-9-3(2).

Therefore, Taxpayer, as a retail merchant, has a duty to collect and remit sales tax on its sales of tangible personal property. In situations when Taxpayer fails to collect and hold the taxes in trust for the state, Taxpayer is personally liable for the sales tax due to the state for those sales. Since Taxpayer failed to collect the sales tax from its customers, the Department assessed sales tax liabilities on the Taxpayer.

Taxpayer argues that the Department has assessed sales tax on seven transactions that are not subject to Indiana sales tax. Taxpayer states that for these transactions "the customers' vehicles were picked up by the taxpayer out-of-state, [taxpayer] performed repairs [to the vehicles] in Indiana, and then the taxpayer delivered back the vehicles to its customers out-of-state." Thus, Taxpayer maintains these repair transactions are not sourced to Indiana, but are sourced to the states where the out-of-state delivery occurred.

The Department determined that these transactions were, regardless of the out-of-state delivery, subject to Indiana sales tax, as follows:

However, even if the taxpayer delivered the vehicles back to its customers after completing repairs in Indiana, the taxpayer is not selling these vehicles to its customers. These vehicles are originally and [are] still owned by its customers. The taxpayer is instead making retail transaction[s] in Indiana with respect to repair or replacement parts installed while performing these repairs on its customers' property. By [authorizing the retail merchant to] install[] the repair parts on [its] vehicle, the customer has exercised the right of ownership of the parts.

The question of whether a customer "has exercised the right to ownership" is the test for the imposition of use tax. See IC § 6-2.5-3-2(a) (imposing the use tax "on the storage, use, or consumption of tangible personal property in Indiana.") See IC § 6-2.5-3-1(a) (defining "use" as "the exercise of any right or power of ownership over tangible personal property.") However, this situation is not the Department assessing use tax on the purchaser, but is the Department assessing sales tax on the retail merchant. This question of whether a customer "has exercised the right to ownership" is not the appropriate consideration for requiring a retail merchant to collect and remit Indiana sales tax for a sales transaction.

The general sourcing statute for retail merchants to determine if the retail merchant's transaction is subject to Indiana sales tax is found at IC § 6-2.5-13-1. If, pursuant to IC § 6-2.5-13-1, the sale is sourced to Indiana, the retail merchant must collect and subsequently remit sales tax at the time of the sale based on the gross retail income received by the retail merchant, unless the purchaser presents the retail merchant with an exemption certificate. For the transactions in question, a transaction where "the product is not received by the purchaser at a business location of the seller," the retail merchant is to source the sale of its product "to the location where receipt by the purchaser... occurs." IC § 6-2.5-13-1(d)(2). "Receipt" is defined as "taking possession of tangible personal property [or] making first use of services... whichever comes first." IC § 6-2.5-13-1(a). Thus, these repairs transactions that include the sales of repair parts will be sourced to the location where "the purchaser" either first "takes possession of the tangible personal property" or first "makes use of the services." The statute focus is on the "purchaser" and not on the retail merchant.

For these type transactions—where the out-of-state customer's property is imported into Indiana by the retail merchant, is repaired by retail merchant, and is delivered by the retail merchant to the out-of-state customer—the purchaser neither first "takes possession of the tangible personal property" nor first "makes use of the services" until the property is delivered to and accepted by the customer. If this property is delivered to and accepted by the purchaser at a place outside of Indiana, then the sales transaction, for purposes of sales tax, is sourced to the state of delivery.

Taxpayer protested the assessment of sales tax on seven transactions that it asserts represent these type of transactions where the repaired property was delivered to the out-of-state customer at a location outside of Indiana. During the course of the protest, Taxpayer submitted additional documentation, for three of the transactions, to show that the repaired property was delivered to the out-of-state customer at a location outside of Indiana. The Department is prepared to accept this documentation, for this one time only, for the following transactions:

9/17/2008 transaction, audit report p. 5, in the amount of \$9,394.00;

8/17/2009 transaction, audit report p. 6, in the amount of \$800;

2/1/2009 transaction, audit report p. 6, in the amount of \$51,867.00.

However, Taxpayer is on notice that this documentation may not suffice for future transactions and more detailed records need to be retained for any of these type of transactions to be sourced to the out-of-state delivery locations in the future. Additionally, Taxpayer's protest, as to the other four transactions in question, for which additional delivery documentation was not presented, is denied.

FINDING

Taxpayer's protest is sustained in part and denied in part. Taxpayer's protest is sustained for the above mentioned three transactions. Taxpayer's protest, as to the other four transactions in question, is denied.

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